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Superior Court of California
County of Fresno
By: A. Rodriguez, Deputy

8 SUPERIOR COURT OF CALIFORNIA
9 FRESNO COUNTY
10

11 HOWARD LACY,
12 Plaintiff,

13 vs.
14

15 CITY OF FRESNO, a municipal corporation;
and DOES 1 through 20, inclusive,
16 Defendants.
17

) Case No.: 19CECG03160
)
)

) COMPLAINT
)
)

) CIVIL UNLIMITED CASE
AMOUNT EXCEEDS \$25,000
)

) DEMAND FOR JURY TRIAL
)
)

18 Plaintiff, HOWARD LACY alleges on the basis of personal knowledge and/or information and
19 belief:

20 **PARTIES**

21 1. Plaintiff, HOWARD LACY, is and at all relevant times herein was, a resident of the
22 County of Fresno.

23 2. All events and occurrences alleged herein took place in the County of Fresno.

24 3. Defendant, CITY OF FRESNO, is, and at all relevant times herein was, a municipal
25 corporation and a charter city located in the County of Fresno, State of California.

26 4. Plaintiffs are informed and believe, and on that basis allege, that at all times
27 mentioned herein each Defendant, whether actually or fictitiously named herein, was the principal,
28 agent (actual or ostensible), or employee of each other Defendant, and in acting as such principal or

COMPLAINT

1 within the course and scope of such employment or agency, took some part in the acts and omissions
2 hereinafter set forth, by reason of which each Defendant is liable to Plaintiffs for the relief prayed
3 for herein.

4 5. To the extent that any Defendant is an independent contractor, Plaintiff alleges that
5 each of the other Defendants exercised such dominion and control over the manner, method, and
6 means of the work contracted for, that the acts of any such independent contractor should by law be
7 attributed to the principal who hired such contractor for the work performed.

8 6. Plaintiff does not know the true names and capacities, whether corporate, partnership,
9 associate, individual or otherwise, of Defendants sued herein as DOES 1 through 20, inclusive.
10 Plaintiff is informed and believe, and on that basis alleges, that Defendant DOES 1 through 20,
11 inclusive, are in some manner responsible for the acts, occurrences and transactions set forth herein,
12 and are legally liable to Plaintiff. Plaintiff will seek leave to amend this complaint to set forth the
13 true names and capacities of these fictitiously named Defendants, when ascertained.

14 **JURISDICTION AND VENUE**

15 7. Venue is proper in this judicial district, pursuant to California Code of Civil
16 Procedure §394(a). Defendant City of Fresno is located in the County of Fresno and is within the
17 jurisdiction of this Court for purposes of service of process.

18 **FACTUAL BACKGROUND**

19 8. Plaintiff has been an employee of Defendant CITY OF FRESNO ("Fresno") for
20 approximately 16 years.

21 9. Plaintiff has been employed in Fresno's Code Enforcement Department in some
22 capacity for the entire duration of said employment.

23 10. Plaintiff is a caucasian male who is approximately 54 years of age.

24 11. Plaintiff has an exemplary employment record with Fresno and has always received
25 high marks on personnel evaluations.

26 12. Plaintiff is currently employed by Fresno as Housing Program Supervisor.

27 13. Within the Code Enforcement Department is also employed an individual by the name
28 of Lakebbia Wilson ("Wilson"). Wilson has been employed off and on with Fresno in the Code

1 Enforcement Department for a time at least coextensive with the term of Plaintiff's employment with
2 Fresno. Wilson is African-American.

3 14. Wilson has a history of causing conflict, including racially motivated conflict, with
4 other staff in the Code Enforcement Department. This behavior has on multiple occasions been
5 directed at Plaintiff. Wilson has made numerous unwarranted complaints of racism against Plaintiff
6 during his employment with Fresno with the only break in this behavior occurring during the
7 approximately 2 ½ years Wilson was separated from employment with the City. Not one of the
8 complaints made by Wilson against Plaintiff been was substantiated. Wilson, upon her return to
9 employment with Fresno some time in 2016, made an additional two unwarranted and meritless
10 complaints against Plaintiff for racism. The complaints were malicious, and have been proven to
11 be unfounded and completely lacking merit.

12 15. During 2017 Wilson made a formal complaint with Code Enforcement management
13 and the Personnel Department alleging racism against Plaintiff which prompted an investigation by
14 Fresno. The investigation lasted for approximately nine months. The outcome of the investigation
15 was a determination that the complaint was meritless. Plaintiff was informed upon the conclusion
16 of the investigation that not a single portion of the complaint was substantiated.

17 16. During June of 2018, upon the conclusion of the investigation of Wilson's complaint
18 against him, Plaintiff met with certain members of Fresno's managerial staff. Managerial staff
19 present at that meeting included Tim Burns, the Code Enforcement Manager for Fresno, Jennifer
20 Clark, the Director of the Development and Resource Management Department ("DARM"), and
21 Kelli Furtado, the Assistant Director of DARM. Each of these individuals were Plaintiff's superiors
22 in the Code Enforcement Department for Fresno.

23 17. At the above referenced meeting with managerial staff, Plaintiff was informed that
24 the complaint had been determined to be without merit. Since the meeting was with Plaintiff's direct
25 supervisors, Plaintiff requested that Wilson be investigated for making constant racially motivated
26 and frivolous complaints of racism against Plaintiff. Plaintiff's request was summarily denied, and
27 no investigation was conducted, even though it had made a practice of investigating every one of
28 Wilson's false complaints against Plaintiff. Accordingly, Fresno allowed the pattern of race based

1 attacks on Plaintiff by Wilson to go without consequence and without any steps taken to stop any
2 further such behavior toward Plaintiff.

3 18. At the same meeting, Plaintiff requested that he be transferred to another department
4 or function within Fresno so that he would not be forced to endure further frivolous complaints and
5 acts of race based hostility by Wilson. This request for a transfer was also summarily denied and
6 Plaintiff was told he would not be transferred.

7 19. Some time within a few weeks after Plaintiff made the request for a transfer,
8 Plaintiff's work area was relocated to a different floor.

9 20. Shortly after Plaintiff's work area was relocated, on or about August 16, 2018,
10 Plaintiff was placed on administrative leave pending another administrative investigation, again in
11 response to a racially motivated complaint made by Wilson against Plaintiff. This confirmed
12 Plaintiff's fears of another frivolous claim of racism being made by Wilson. The anxiety caused by
13 such action on the part of Wilson had been the basis for Plaintiff's request for an investigation of
14 Wilson, as well as Plaintiff's request to be transferred or relocated.

15 21. Plaintiff filed a claim with the Department of Fair Employment and Housing
16 ("DFEH") on or about April 8, 2019, alleging among other things, that Fresno had retaliated against
17 him for complaining about the hostile environment in which he had been forced to work and asking
18 to have Wilson's continuous, knowingly false and meritless claims against him investigated.
19 Plaintiff received a right to sue letter from the DFEH.

20 22. Subsequently, Plaintiff was directed by Fresno to return to work on July 22, 2019.
21 Upon learning that he was to report back to work, Plaintiff informed Fresno of his serious concerns
22 as to being required to work in the same department or area as Wilson. Plaintiff inquired as to
23 whether there was some other department or location that he could be placed in so that he would not
24 have to be in proximity to Wilson and risk further hostility and unfounded, frivolous and false
25 complaints involving racism. Fresno refused to protect Plaintiff from Wilson's pattern of racially
26 motivated complaints in as much as Plaintiff's request for such accommodation was denied by
27 Fresno, and he was told to report to the City Attorney's office on July 22, 2019 when he returned to
28 work. The City Attorney's office had been placed in the position of overseeing the Code

1 Enforcement Department.

2 23. Fresno has continued to place Plaintiff within the same building and in close
3 proximity to Wilson, even though it is fully aware of Wilson's history of racial hostility toward
4 Plaintiff.

5 24. Fresno has informed Plaintiff that it has not concluded the most recent investigation
6 of him as to the last complaint filed by Wilson, even though he has been brought back into work.

7 25. Fresno continues to allow Wilson to roam unsupervised in the Code Enforcement
8 department, and has taken no steps to protect Plaintiff from any further unwarranted racial
9 complaints by Wilson, or to otherwise protect Plaintiff from Wilson's hostile behavior.

10 26. Wilson's racially motivated, hostile behavior, as set forth herein, has been allowed
11 to continue for years without consequence or steps taken to stop such behavior. Wilson's behavior
12 is well known to numerous other employees within the Code Enforcement Department, as well as
13 to Fresno's management, including Plaintiff's direct supervisors.

14
15 **FIRST CAUSE OF ACTION**

16 **(Violation of FEHA (Government Code § 12940(k) (Failure to Prevent**
17 **Discrimination, Harassment, and Retaliation))**

18 27. The allegations set forth in paragraphs 1 through 26 are re-alleged and incorporated
19 herein by reference.

20 28. At all times herein mentioned, FEHA, Government Code section 12940(k), was in
21 full force and effect and was binding on defendant. This statute states that it is an unlawful
22 employment practice in California for an employer "to fail to take all reasonable steps necessary to
23 prevent discrimination and harassment from occurring." Prior to filing the instant Complaint,
24 plaintiff filed a timely administrative charge with the DFEH and received a right-to-sue letter.

25 29. During the course of Plaintiff's employment, defendant failed to prevent their
26 employees from engaging in intentional harassment on the bases of race, national origin, color,
27 sexual orientation, marital status, and/or other protected statuses or protected activities.

28 30. Plaintiff believes and on that basis alleges that his race, national origin, color, sexual

1 orientation, marital status, and/or other protected status and/or protected activity were substantial
2 motivating factors in defendant's employees' discrimination against and harassment of him.

3 31. As a proximate result of defendant's willful, knowing, and intentional misconduct,
4 plaintiff has sustained and continues to sustain substantial losses of earnings and other employment
5 benefits.

6 32. As a proximate result of defendant's willful, knowing, and intentional misconduct,
7 plaintiff has suffered and continues to suffer humiliation, emotional distress, and physical and mental
8 pain and anguish, all to his damage in a sum according to proof.

9 33. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
10 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reasonable attorneys'
11 fees and costs (including expert costs) in an amount according to proof.

12 34. Defendant's misconduct was committed intentionally, in a malicious, despicable,
13 oppressive, fraudulent manner, entitling plaintiff to punitive damages against defendants.

14 **SECOND CAUSE OF ACTION**

15 **(Violation of FEHA Government Code § 12900, et seq.)**

16 **(Retaliation for Engaging in Protected Activity)**

17 35. The allegations set forth in paragraphs 1 through 34 are re-alleged and incorporated
18 herein by reference.

19 36. Plaintiff's complaints to defendants about racial harassment, as well as actual and/or
20 perceived, race, and/or other characteristics protected by FEHA, Government Code section 12900,
21 et seq., were motivating factors in defendant's decision to take adverse employment action, including
22 constructive employment termination, against plaintiff.

23 37. Defendant's agents and employees made false racial accusations and made racially
24 motivated requests for investigations against Plaintiff.

25 38. Plaintiff complained to defendant about the racially motivated accusations and
26 investigations, but nothing was done. On the basis of the above, plaintiff believes and alleges that
27 defendant retaliated against him for his complaints of harassment.

28 39. Plaintiff complained to defendant of the racial harassment he experienced.

1 Thereafter, defendant retaliated against plaintiff by harassing him and taking adverse employment
2 actions against him, in major part because he reported the racial harassment.

3 40. Defendant's conduct, as alleged, violated FEHA, Government Code section 12900,
4 et seq., and defendant committed unlawful employment practices, including by the following,
5 separate bases for liability:

6 a. Barring, discharging, refusing to transfer, and/or otherwise discriminating against plaintiff,
7 in whole or in part on the basis of plaintiff's actual and/or perceived race, and/or other protected
8 characteristics, in violation of Government Code section 12940(a);

9 b. Retaliating against plaintiff for his complaints to defendants about the racial harassment
10 he was experiencing by taking adverse employment actions against him, in violation of Government
11 Code section 12940(h);

12 c. Harassing plaintiff and/or creating a hostile work environment, in whole or in part on the
13 basis of plaintiff's actual and/or perceived race, and/or other protected characteristics, in violation
14 of Government Code section 12940(j);

15 d. Failing to take all reasonable steps to prevent discrimination, harassment, and retaliation
16 on the basis of actual and/or perceived race, in violation of Government Code section 12940(k);

17 e. Retaliating against plaintiff for seeking to exercise rights guaranteed under FEHA and/or
18 opposing defendant's failure to recognize such rights, including the right to be free of discrimination,
19 in violation of Government Code section 12940(h).

20 41. As a proximate result of defendants' willful, knowing, and intentional discrimination
21 against plaintiff, plaintiff has suffered and continues to suffer humiliation, emotional distress, and
22 physical and mental pain and anguish, all to his damage in a sum according to proof.

23 42. Defendant's misconduct was committed intentionally, in a malicious, despicable,
24 oppressive, fraudulent manner, entitling plaintiff to punitive damages against defendants.

25 43. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
26 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reasonable attorneys'
27 fees and costs (including expert costs) in an amount according to proof.
28

1 **THIRD CAUSE OF ACTION**

2 **(Intentional Infliction of Emotional Distress)**

3 44. The allegations set forth in paragraphs 1 through 43 are re-alleged and incorporated
4 herein by reference.

5 45. The conduct of Fresno as set forth above was so extreme and outrageous that it
6 exceeded the boundaries of human decency and was beyond pale of conduct tolerated in a civilized
7 society. This conduct was intended to cause severe emotional distress, or was done in reckless
8 disregard of the probability of causing severe emotional distress.

9 46. As an actual and proximate result of Fresno's wrongful conduct, Plaintiff has suffered
10 and continues to suffer severe and continuous humiliation, emotional distress, and physical and
11 mental pain and anguish, all to her damage in an amount according to proof at the time of trial.

12 47. Fresno committed the acts alleged herein maliciously, fraudulently, and oppressively,
13 with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive
14 amounting to malice and in conscious disregard of Plaintiff's rights. Because the acts taken toward
15 Plaintiff were carried out by Defendants acting in a deliberate, cold, callous, and intentional manner
16 in order to injure and damage Plaintiff, he is entitled to recover punitive damages from Defendants
17 in an amount according to proof.

18 **FOURTH CAUSE OF ACTION**

19 **(Negligent Infliction of Emotional Distress)**

20 48. The allegations set forth in paragraphs 1 through 47 are re-alleged and incorporated
21 herein by reference.

22 49. As an employee of Fresno, Plaintiff was owed a duty of due care by Fresno to ensure
23 that Plaintiff was not exposed to foreseeable harms.

24 50. Fresno knew or should have known, that Plaintiff was being subjected to racial
25 harassment, discrimination and retaliation, and that by failing to exercise due care to prevent its
26 employees from engaging in harassment, discrimination and retaliation, and that by failing to
27 exercise due care to prevent its employees from engaging in harassing, discriminatory and retaliatory
28 course of conduct could and would cause Plaintiff to suffer severe emotional distress.

1 51. Fresno failed to exercise its duty of care to prevent its employees, managers,
2 supervisors and officers from harassing, discriminating and retaliating against Plaintiff.

3 52. As a direct and proximate result of the acts and conduct of Fresno, Plaintiff has been
4 caused to and did suffer and continues to suffer severe and extreme mental and emotional distress,
5 including but not limited to anguish, humiliation, embarrassment, fright, depression and anxiety, the
6 exact nature and extent of which are not now know to him. Plaintiff does not know at this time the
7 exact duration or permanence of said injuries, but is informed and believes and thereon alleges that
8 some if not all of the injuries are reasonably certain to be permanent in character.

9 53. By the aforesaid acts and omissions of Fresno, Plaintiff has been directly and legally
10 caused to suffer damages as alleged herein.

11 PRAYER WHEREFORE, plaintiff, prays for judgment against defendants as follows:

- 12 a. For general and special damages according to proof;
13 b. For exemplary damages, according to proof;
14 c. For pre-judgment and post-judgment interest on all damages awarded;
15 d. For reasonable attorneys' fees;
16 e. For costs of suit incurred;
17 h. For such other and further relief as the Court may deem just and proper.

18 ADDITIONALLY, plaintiff, demands trial of this matter by jury. The amount demanded
19 exceeds \$25,000.00.

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21 Dated: August 30, 2019

LAW OFFICE OF J. BRENT RICHARDSON, PC

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25 Brent Richardson
26 Attorney for Plaintiff, HOWARD LACY
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